IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2969 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAYRAMBHAI ISHWARBHAI RABARI

Versus

CHAUDHARI BAUBHAI SENDHABHAI

Appearance:

1. First Appeal No. 2969 of 2001

MR MEHUL SHARAD SHAH for Petitioner No. 1

MRS NILIMA M SHAH for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

MR PV NANAVATI for Respondent No. 2

MR VIBHUTI NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 27/07/2001

ORAL JUDGEMENT

1. Appellant-original claimant, by filing this appeal under Section 173 of the Motor Vehicles Act, 1988, ('Act' for short), has challenged the order dated November 9, 2000, passed by the Motor Accident Claims Tribunal (Aux.), Mehsana, below application Exh.5, filed by the appellant under Section 140 of the Act, in MACP No.360 of 1999, by which order, the Tribunal has rejected the application filed by the appellant under Section 140 of the Act.

2. The appellant filed MACP No.360 of 1999 in the

Motor Accident Claims Tribunal (Aux.), Mehsana, claiming compensation for the injuries sustained by him in vehicular accident which took place on December 3, 1998 due to rash and negligent driving of Autorickshaw bearing GJ-2V-1963 driven by respondent No.1. The said autorickshaw was insured with respondent No.2, United India Insurance Company Limited. In the main claim petition, the appellant had claimed compensation of Rs.1 lakh from the respondents. During pendency of the main claim petition, the appellant filed application under Section 140 of the Act for interim compensation of Rs.25,000/- on 'no fault liability' basis. The Tribunal, after hearing the parties, rejected the application filed by the appellant by holding that (i) the appellant had lodged the complaint nine days after his discharge from the hospital, and (ii) involvement of autorickshaw in question was not, prima facie, proved. On the said two findings, the Tribunal rejected the application filed by the appellant under Section 140 of the Act, which has given rise to filing of the present appeal.

3. Heard learned advocates for the parties.

4. At the stage of deciding application under Section 140 of the Act, the appellant-original claimant is only required to prove that he had sustained injuries in the vehicular accident which has resulted into permanent disablement and that involvement of the vehicle in question was proved. Admittedly, the accident had taken place due to rash and negligent driving of the driver, namely, respondent No.1, who is the owner of Autorickshaw bearing GJ-2V-1963. It is admitted fact that the said rickshaw was insured with respondent No.2. The learned advocate for the appellant has produced chargesheet which indicates that a criminal case has already been lodged against respondent No.1 in the competent court, which is registered as Criminal Case No.1531 of 1999 under Sections 279 and 337 of the Indian Penal Code. The appellant had also produced certificate of Dr. Kamlesh J. Gurjar dated December 3, 1999, indicating that the appellant had sustained fracture on right toe and was advised rest from December 3, 1998 to January 3, 1999. The certificate produced by the appellant indicates that he had sustained fracture which has resulted into permanent disablement. The above documents, prima facie, show that the appellant had sustained injuries due to vehicular accident which was caused by Autorickshaw bearing GJ-2V-1963 driven by respondent No.1. Respondent N.1 was also owner of the said autorickshaw which was insured with respondent No.2. The fact that the chargesheet is also filed against

respondent No.1 as owner and driver of the autorickshaw indicates that the autorickshaw was involved in the said accident and, due to rash and negligent driving of the said autorickshaw, the appellant had sustained injuries. Award under 'no fault liability' under Section 140 of the Act is a benevolent provision made by the legislation, and the Tribunal has to award interim compensation after being satisfied that the injuries were sustained in the vehicular accident which was caused by the offending vehicle in question. In my opinion, the appellant has produced sufficient evidence before the Tribunal and, therefore, he is entitled to interim compensation under Section 140 of the Act. In my view, the Tribunal has erred in rejecting application filed by the appellant under Section 140 of the Act.

5. As a result of foregoing discussion, the appeal is allowed, with no order as to costs. The judgment and order dated November 9, 2000, passed by the Motor Accident Claims Tribunal (Aux.), Mehsana, below application Exh.5, filed under Section 140 of the Act, in MACP No.360 of 1999 is quashed and set aside.

It is directed that the respondents Nos.1 and 2 shall deposit the award of Rs.25,000/- under Section 140 of the Act with interest at the rate of 9% per annum from the date of the incident till deposit in the Tribunal.

The original claimant shall file an undertaking before the Tribunal to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under this order shall be adjusted against the final award in the main claim petition.

On the said undertaking being filed, the amount awarded by this order may be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal.

July 27, 2001 (M.H. Kadri, J.)
(swamy)